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NOV 30 1981 10 20 AM

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NOV 30 1981 10 20 AM
INTERSTATE COMMERCE COMMISSION

No. 1-334A052
Date NOV 30 1981
Fee \$ 50.00

ICC Washington, D. C. November 30, 1981

The Kansas City Southern Railway Company
Conditional Sale Financing Dated as of November 30, 1981
Floating Rate Conditional Sale Indebtedness
Due 1996
[CS&M Ref.: 2302-842]

Dear Madam:

Pursuant to 49 U.S.C. § 11303(a), I enclose here-
with on behalf of The Kansas City Southern Railway Company,
for filing and recordation, counterparts of the following:

(a) Conditional Sale Agreement dated as of
November 30, 1981, between General Motors Corporation
(Electro-Motive Division) and The Kansas City Southern
Railway Company; and

(b) Agreement and Assignment dated as of
November 30, 1981, between General Motors Corporation
(Electro-Motive Division) and Chemical Bank.

The names and addresses of the parties to the afore-
mentioned agreements are as follows:

1. Assignee:

Chemical Bank
20 Pine Street
New York, N.Y. 10005

Ms. Lee

New Number

A

Counseling G. H. Harrison

2. Builder-Vendor:

General Motors Corporation
(Electro-Motive Division)
La Grange, Illinois 60525.

3. Railroad:

The Kansas City Southern Railway Company
114 West Eleventh Street
Kansas City, Missouri 64105.

The equipment covered by the aforementioned agreements is listed in Exhibit A attached hereto. The equipment bears the legend "Ownership Subject to a Security Agreement Filed with the Interstate Commerce Commission".

Enclosed is our check for \$50 for the required recordation fee. Please accept for recordation one counterpart of each of the enclosed agreements, stamp the remaining counterparts with your recordation number and return them to the delivering messenger along with your fee receipt, addressed to the undersigned.

Very truly yours,



Michael J. O'Brien
As Agent for The Kansas City
Southern Railway Company

Interstate Commerce Commission,
Washington, D.C. 20423

Attention of Agatha L. Mergenovich, Secretary

Encl.

llN

EXHIBIT A

<u>Equipment</u>	<u>Railroad Road Numbers</u>
2 GP 40-2 Road Locomotives	KCS 796 KCS 797
10 SD-50 Road Locomotives	KCS 704-713

Interstate Commerce Commission
Washington, D.C. 20423

11/30/81

OFFICE OF THE SECRETARY

Michael J. O'Brien
Cravath, Swaine & Moore
One Chase Manhattan Plaza
New York, 10005

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 11/30/81 at 10:30am, and assigned re-recording number(s). 13340 & 13340-A

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

13340

RECORDATION NO. Filed 1425

NOV 30 1981 10 30 AM

INTERSTATE COMMERCE COMMISSION

[CS&M Ref. No. 2302-842]

CONDITIONAL SALE AGREEMENT

Dated as of November 30, 1981

Between

GENERAL MOTORS CORPORATION
(Electro-Motive Division),

and

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

(Covering 2 GP-40-2 Road Locomotives and 10 SD-10 Road Locomotives)

CONDITIONAL SALE AGREEMENT

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Note: This Table of Contents is for convenience of reference and is not part of the Agreement.

CONDITIONAL SALE AGREEMENT, dated as of November 30, 1981, between GENERAL MOTORS CORPORATION (Electro-Motive Division) (the "Builder" or the "Vendor" as the context may require, all as more particularly set forth in Article 1 hereof), and THE KANSAS CITY SOUTHERN RAILWAY COMPANY, a Missouri corporation (the "Railroad").

WHEREAS the Builder has agreed to construct, sell and deliver to the Railroad, and the Railroad has agreed to purchase, the railroad rolling stock equipment described in Schedule B attached hereto (the "Equipment") subject to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Definitions. The term "Vendor", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, GENERAL MOTORS CORPORATION (Electro-Motive Division) and any successor or successors for the time being to its manufacturing properties and businesses, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment. The term "Builder", whenever used in this Agreement, means, both before and after any such assignment, GENERAL MOTORS CORPORATION (Electro-Motive Division) and any successor or successors for the time being to its manufacturing properties and businesses.

ARTICLE 2. Sale and Purchase. Subject to the terms and conditions set forth in this Agreement, the Builder shall construct the units of the Equipment at its plant set forth in Schedule B hereto and will sell and deliver to the Railroad, and the Railroad will purchase from the Builder and accept delivery of and pay for (as hereinafter provided), such Equipment, each unit of which shall have been constructed in accordance with the specifications set forth therefor in Schedule B hereto and in accordance with such modifications thereof as may have been or may be agreed upon in writing between the Builder and the Railroad (which specifications

and modifications, if any, are hereinafter called the "Specifications"). The Builder represents and warrants that the design, quality and component parts of each unit of the Equipment shall conform, on the date of delivery of each thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards, if any, recommended by the Association of American Railroads reasonably interpreted as being applicable to equipment of the character of such units of the Equipment, and each unit of the Equipment will be standard gauge railroad rolling stock equipment.

ARTICLE 3. Inspection and Delivery. The Builder will deliver the units of the Equipment to the Railroad at the place or places specified in Schedule B hereto (or if Schedule B does not specify a place or places, at the place or places designated from time to time by the Railroad), freight charges, if any, prepaid, in accordance with the delivery schedule set forth in Schedule B hereto; provided, however, that the Builder shall have no obligation to deliver any unit of the Equipment hereunder at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 16 hereof or after any event of default (as described in Article 16 hereof), or event which with the lapse of time or demand, or both, could constitute such an event of default, shall have occurred and be continuing.

The Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

Notwithstanding the preceding provisions of this Article 3, (1) any Equipment not delivered, accepted and settled for pursuant to Article 4 hereof on or before the Cut-Off Date (as defined in Article 4 hereof) shall be excluded herefrom and (2) if the aggregate Invoiced Purchase Prices (as defined in Article 4 hereof) of all Equipment previously settled for under this Agreement exceeds \$11,225,000, the Railroad may exclude herefrom any units of Equipment not theretofore settled for under this Agreement. If any unit or units of Equipment shall be excluded from this Agreement pur-

suant to the immediately preceding sentence, the Railroad and the Builder shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom. Except to the extent otherwise expressly provided in the purchase order or orders covering the Equipment, the Railroad shall nevertheless be obligated to accept any Equipment excluded from this Agreement and pay the full purchase price therefor, determined as provided in this Agreement, if and when such Equipment shall be completed and delivered by the Builder, such payment to be in cash within 30 days following the later of the delivery of, or the presentation of the invoice for, such Equipment, either directly or, in case the Railroad shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Railroad shall determine and as shall be reasonably acceptable to the Builder.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Railroad and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder agrees to inspect all materials used in the construction of its Equipment in accordance with the standard quality control practices of the Builder. Upon completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Railroad for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, on or prior to the Closing Date (as defined in Article 4 hereof) hereunder in respect of each such unit of Equipment acquired by the Railroad, such inspector or an authorized representative or an officer of the Railroad shall execute and deliver to the Builder a certificate of acceptance (a "Certificate of Acceptance") stating, on behalf of the Railroad, that such unit or units have been inspected and accepted by the Railroad under this Agreement and are marked in accordance with Article 7 hereof; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 14 hereof.

On delivery of each such unit hereunder at the place specified for delivery, the Railroad will assume the responsibility and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of such unit; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 14 hereof.

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Schedule B hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Builder and the Railroad. The term "Purchase Price" as used herein for any unit of the Equipment shall mean the base price or prices as so increased or decreased.

For the purpose of making settlement, the Equipment of the Builder shall be divided into groups of units of the Equipment, delivered to and accepted by the Railroad during a period of not less than 30 days (each such group being hereinafter called a Group), or otherwise as the Builder, the Railroad and the Vendor may agree to.

The Railroad hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) on each Closing Date (as hereinafter defined) with respect to each Group the amount, if any, by which (x) the aggregate Purchase Price of all units of the Equipment covered by this Agreement for which settlement has theretofore or is then being made, as stated in the invoice or invoices presented (said invoiced prices being herein called the Invoiced Purchase Prices), exceeds (y) the sum of \$11,225,000 and any amount or amounts previously paid or payable by the Railroad with respect to the Invoiced Purchase Prices pursuant to this subparagraph (a); and

(b) in 30 equal consecutive semiannual installments, as hereinafter provided, an amount equal to the aggregate of the Invoiced Purchase Prices of all Groups less the amount, if any, paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph (the aggregate of said installments being hereinafter called the "CSA Indebtedness").

If this Agreement shall be assigned by the Builder, the obligations of the Railroad under subparagraph (a) of the preceding paragraph of this Article 4 shall be an unsecured obligation and the Builder shall not have any lien on, or claim against, the Equipment or any part thereof with respect to such obligations.

The installments of the CSA Indebtedness shall be payable semiannually, in immediately available funds, on June 1 and December 1 in each year commencing June 1, 1982, to and including December 1, 1996 (or if any such date is not a business day (as hereinafter defined), on the next succeeding business day with interest at the rate per annum specified below), each such date being hereinafter called a "Payment Date". The unpaid portion of the CSA Indebtedness shall bear interest from the Closing Date on which such indebtedness was incurred at a rate of interest per annum for each Interest Period equal to the Floating Rate. For purposes hereof, (i) "Interest Period" shall mean with respect to any CSA Indebtedness (a) initially, the period from the Closing Date in respect of which such CSA Indebtedness was incurred and ending on November 30, 1981; provided that (x) if such date is not a Banking Day, such Interest Period shall be extended to the next succeeding Banking Day, unless such next succeeding Banking Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Banking Day, (y) any Interest Period which begins on the last Banking Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month during which such Interest Period is to end) shall end on the last Banking Day of the calendar month during which such Interest Period is to end and (z) interest shall accrue from and including the first day of each Interest Period to but excluding the last day of such Interest Period, and (b) thereafter, each period commencing on the last day of the next preceding Interest Period applicable to such CSA Indebtedness and ending on the numerically corresponding day in the calendar month 1 month, 3 months, 6 months or 12 months thereafter, as the Railroad shall select in the notice given pursuant to (b) below, or if the Railroad shall fail to so select, 1 month; provided, as aforesaid; provided further, that if the unpaid principal amount of the CSA Indebtedness to which such Interest Period is to apply is required to be paid on the next succeeding Payment Date, such Interest Period shall end no later than such Payment Date; (ii) "Floating Rate" shall mean (a) the LIBOR Rate plus 1/2 of 1% or (b) the Prime Rate, as the Railroad shall select by giving written or telex notice to Chemical Bank ("Chemical") not later than 12:00 noon New York City time on the day three Banking Days prior to each Interest Period, or if the Railroad shall fail to so select, the Prime Rate; (iii) "Banking Day" shall mean any day other than a Saturday, Sunday or legal holiday on which banks are open for business (including dealings in dollar deposits) in New York City and

in the London Interbank Market; (iv) "Prime Rate" shall mean the rate per annum announced by Chemical from time to time as being in effect for prime commercial domestic loans of 90-day maturities (for purposes of this Agreement, any change in the Prime Rate shall be effective on the date such change is announced by Chemical); and (v) "LIBOR Rate" with respect to any Interest Period, shall mean an interest rate (rounded upwards, if necessary, to the next 1/100th of 1%) equal to the rate at which dollar deposits are offered in immediately available funds in the London Interbank Market to the London office of Chemical by leading banks in the London Interbank Market at 11:00 a.m., London time, two Banking Days prior to the commencement of such Interest Period for deposits in dollars approximately comparable in principal amount to the unpaid principal amount of the CSA Indebtedness to which such Interest Period is to apply and for the maturity comparable to the applicable Interest Period. Each determination of the LIBOR Rate shall be made by Chemical and shall be conclusive absent manifest error.

Interest on the unpaid balance of the CSA Indebtedness shall be payable to the extent accrued (i) on portions of the CSA Indebtedness as to which the Prime Rate applies, on each June 1 and December 1 commencing June 1, 1982, and (ii) on portions of the CSA Indebtedness as to which the LIBOR Rate applies, on the last date of the applicable Interest Period (provided that if such Interest Period shall be greater than six months in duration, interest shall be payable on the dates referred to in (i) commencing with the first of such dates after the commencement of such Interest Period, and on the last date of such Interest Period).

In the event that, on each occasion, on the day two Banking Days prior to the commencement of any Interest Period, Chemical shall have determined (which determination shall be conclusive and binding on the Railroad) that dollar deposits in the applicable amounts are not generally available in the London Interbank Market, or that the rate at which such dollar deposits are being offered will not adequately and fairly reflect the cost to Chemical of making and maintaining its investment in the CSA Indebtedness pursuant to the Finance Agreement (its "Investment"), or that reasonable means do not exist for ascertaining the LIBOR Rate, Chemical shall as soon as practicable thereafter give written or telex notice of such determination to the Railroad. If such notice shall have been given and until the circumstances giving rise to such notice no longer exist, the Floating Rate

shall be the Prime Rate. Each determination of Chemical hereunder shall be conclusive absent manifest error.

Since the cost to Chemical of making or maintaining the Investment may fluctuate as a result of imposition of, or changes in, the reserve requirements promulgated by the Board of Governors of the Federal Reserve System of the United States, including, but not limited to any reserve on Eurocurrency Liabilities as defined by Regulation D at the ratios provided in such Regulation from time to time, it is hereby agreed that the Investment shall be deemed to constitute a Eurocurrency Liability (as defined in such Regulation). Such Eurocurrency Liability shall further be deemed to be subject to such reserve requirements without benefit of or credit for proration, exceptions or offsets which may otherwise be available to Chemical from time to time under such Regulation. The Railroad shall pay to Chemical such additional amount or amounts as will compensate it for the effect of such reserve requirements as determined by Chemical on the basis of such reserve requirements applicable to it, which determination shall be conclusive absent manifest error.

Notwithstanding any other provision herein, if after the date of this Agreement any change in applicable law or regulation or in the interpretation or administration thereof by any governmental authority charged with the interpretation or administration thereof (whether or not having the force of law) shall change the basis of taxation of payments to Chemical with respect to the Investment (other than taxes imposed on the overall net income of Chemical by the jurisdiction in which Chemical has its principal office or by any political subdivision or taxing authority therein), or shall impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, Chemical, or shall impose on Chemical or the London Interbank Market any other condition affecting the Investment and the result of any of the foregoing shall be to increase the cost to Chemical of making or maintaining the Investment or to reduce the amount of any sum received or receivable by Chemical in respect thereof, by an amount deemed by Chemical to be material, then (but without duplication for payments otherwise required under this Agreement), the Railroad shall pay to Chemical, upon Chemical's demand, such additional amount or amounts as will compensate Chemical for such additional cost or reduction. A certificate

of Chemical setting forth the basis for the determination from time to time of such amount or amounts as shall be necessary to compensate Chemical as specified in this paragraph shall be delivered to the Railroad and shall be conclusive absent manifest error. Failure on the part of Chemical to demand compensation for any increased costs in any Interest Period shall not constitute a waiver of the Chemical's rights to demand compensation for any increased costs in any other Interest Period. Chemical's right to any additional compensation for increased costs due under this paragraph shall be absolute and shall not be subject to any contention of invalidity or inapplicability of the law or regulation or the interpretation or administration thereof imposing such increased costs on Chemical.

Notwithstanding anything to the contrary herein contained, if any change in any law or regulation or in the interpretation thereof by any governmental authority charged with the administration or interpretation thereof shall make it unlawful for Chemical to make or maintain the Investment at the LIBOR Rate, Chemical may, by written notice to the Railroad, declare that the Floating Rate shall thereafter be the Prime Rate. For purposes of this paragraph, a notice to the Railroad by Chemical shall be effective, if lawful, on the last day of the then current Interest Period or, if there are then more than one current Interest Period, on the last day of each such Interest Period, respectively, otherwise, such notice shall be effective on the date of receipt by the Railroad.

The Railroad shall indemnify Chemical against any loss or expense which Chemical may sustain or incur as a consequence of any change in the Floating Rate described in the preceding paragraph or as a consequence of any prepayment of the CSA Indebtedness (including any loss incurred or to be incurred by it in the reemployment of funds released by any prepayment).

The term "Closing Date" with respect to any Group of the Equipment shall mean such date (on or prior to November 30, 1981, the Cut-Off Date), not more than 15 business days following presentation by the Builder to the Railroad of the invoice and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Railroad by written notice delivered to the Vendor at least four business days prior to the Closing Date designated therein. Such notice shall set forth the number and the

Invoiced Purchase Price of the units of Equipment to be settled for on such Closing Date and the amount or amounts payable by the Vendor to the Builder pursuant to the terms of any assignment by the Builder of its rights hereunder.

The term "business days" as used herein means calendar days excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, are authorized or obligated to remain closed.

Interest under this Agreement shall be calculated on the basis of (x) on portions of the CSA Indebtedness as to which the Prime Rate applies, a 360-day year of 12 30-day months and (y) on portions of the CSA Indebtedness as to which the LIBOR Rate applies, the actual number of days elapsed in a year of 360 days.

The Railroad will pay, to the extent legally enforceable, interest at the rate of 1% per annum in excess of the applicable rate upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 8 hereof, the Railroad shall not have the privilege of prepaying any installment of its indebtedness hereunder prior to the date it becomes due.

In the event the Vendor, pursuant to Article 15 hereof, assigns the right to receive the payments herein provided to be made by the Railroad, the assignee thereof may request the Railroad to make such payments to it at such address as shall be supplied to the Railroad by the assignee.

ARTICLE 5. Taxes. All payments to be made by the Railroad hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, Federal or foreign taxes (other than net income, gross receipts [except gross receipts taxes in the nature of or in lieu of sales or use taxes], excess profits and similar taxes) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or

measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called "impositions"), all of which impositions the Railroad assumes and agrees to pay on demand. The Railroad will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the title of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Railroad shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of counsel for the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any such impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Railroad shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Railroad shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Railroad shall have approved the payment thereof.

ARTICLE 6. Title to the Equipment. Except as provided in Article 8 hereof, the Vendor shall and hereby does retain the full legal title to and property in the Equipment until the Railroad shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as provided in this Agreement. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 8 hereof, when and only when the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided,

shall have been paid, and all the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Railroad at that time, will (a) execute a bill or bills of sale for the Equipment transferring its title thereto and property therein to the Railroad, or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad at its address referred to in Article 21 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Railroad to the Equipment and (c) pay to the Railroad any money paid to the Vendor pursuant to Article 8 hereof and not theretofore applied as therein provided. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Railroad.

ARTICLE 7. Marking of the Equipment. The Railroad will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Schedule B hereto, or in the case of Equipment not there listed such identifying number as set forth in any amendment or supplement extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION" or other appropriate markings approved by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's title to and property in such Equipment and its rights under this Agreement. The Railroad will not place any such unit in operation or exercise any control or dominion over the same until such markings have been made thereon and will replace promptly any such markings which may be removed, defaced or destroyed. The Railroad will not change the identifying number of any unit of such Equipment except in accordance with a statement of new

number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor by the Railroad and filed, recorded and deposited by the Railroad in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Railroad will not allow the name of any person, association or corporation (other than the Vendor) to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Railroad may cause the Equipment to be lettered with the names or initials or other insignia of the Railroad or its affiliates.

ARTICLE 8. Casualty Occurrences; Prepayment of CSA Indebtedness; Insurance. In the event that any unit of the Equipment shall be worn out, obsolete, lost, stolen, destroyed, or irreparably damaged, or otherwise rendered permanently unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called "Casualty Occurrences"), and in the event that the total Casualty Value (as hereinafter defined) of units that shall have suffered a Casualty Occurrence shall exceed \$50,000 (exclusive of units having suffered a Casualty Occurrence with respect to which a written notice shall have been given to the Vendor pursuant to this Article 8), the Railroad shall promptly (after it has knowledge of such Casualty Occurrence) and fully inform the Vendor in regard thereto by written notice. When the aggregate Casualty Value of all units having suffered a Casualty Occurrence (exclusive of units having suffered a Casualty Occurrence with respect to which a payment shall have been made to the Vendor pursuant to this Article 8) shall exceed \$200,000, the Railroad shall on the next date for the payment of principal or interest on the CSA Indebtedness occurring at least 30 days after it has knowledge of such event, pay to the Vendor a sum equal to the aggregate Casualty Value of such units of the Equipment as of the date of such payment and shall file with the Vendor a certificate of an officer of the Railroad setting forth such Casualty Value; provided, however, that if a proceeding specified in clause (c) or (d) of Article 16 hereof shall have been commenced or an event of default or event which with notice, lapse of time and/or demand or failure to take action provided for in Article 16 hereof shall have occurred and be continuing (any such commencement, event of default or event being herein called a "Default"), the Railroad shall forthwith after it has knowledge of any Casualty

Occurrence pay to the Vendor a sum equal to the aggregate Casualty Value of each unit of the Equipment suffering a Casualty Occurrence as of the date of such payment. Any money paid to the Vendor pursuant to this Article 8 shall be applied on the date of receipt thereof to the prepayment of the installments of the CSA Indebtedness in the inverse order of maturity, without premium. The Railroad shall also pay to the Vendor on the date of any such prepayment the unpaid interest accrued hereunder in respect of the CSA Indebtedness so prepaid.

So long as no Default shall have occurred and be continuing, the Railroad may, at any time after it has informed the Vendor in regard to a Casualty Occurrence, cause to be transferred to the Vendor a replacement unit or units of new standard-gauge railroad rolling stock (other than passenger or work equipment) to replace units suffering a Casualty Occurrence and receive credit therefor in an amount equal to the cost thereof (as evidenced by the invoice therefor specified in the next paragraph) against any Casualty Value payment it might otherwise be required to make in respect of the unit or units which shall have suffered the Casualty Occurrence. Such unit or units of replacement equipment shall have a useful life at least as long as that which the Equipment described in Schedule B hereto would have had on the date of such replacement but for the Casualty Occurrence.

Whenever the Railroad shall cause any unit of replacement equipment to be transferred to the Vendor in lieu of making all or any part of any Casualty Value payment, the Railroad shall deliver to the Vendor at the time of transfer of such replacement unit bills of sale, invoices and certificates of acceptance, substantially in the form provided by the first assignment of this Agreement by the Builder, together with:

(1) a certificate of an officer of the Railroad certifying (i) that such replacement unit is new "standard gauge" railroad rolling stock (other than passenger or work equipment), (ii) the date such unit was first put into service, (iii) that such unit has a useful life at least as long as the Equipment of the type described in Schedule B hereto would have had but for the Casualty Occurrence and has been marked as required by the provisions of this Article 8 and (iv) the cost thereof;

(2) an opinion of counsel for the Railroad that title to such replacement unit is vested in the Vendor free and clear from all claims, liens, security interests and other encumbrances except the rights of the Railroad under this Agreement, that such unit has come under and become subject to this Agreement pursuant to a supplement hereto, that all necessary filings have been made to perfect the interests of the Vendor therein and that, in the event of the filing of a petition for the reorganization of the Railroad pursuant to Title 11 of the United States Code, the Vendor shall have the benefits of 11 U.S.C. § 1168 (as now in effect or as hereafter amended) with respect to such replacement unit; and

(3) an executed counterpart of the supplement referred to in clause (2) above stamped to show filing under 49 U.S.C. § 11303.

The Casualty Value of each unit of the Equipment (other than a replacement unit) shall be deemed to be that amount which bears the same ratio to the original Purchase Price thereof (less, in the event that the Railroad shall have made any payment or payments under the provisions of subparagraph (a) of the third paragraph of Article 4 hereof, an amount which bears the same ratio to the aggregate of all such payments as the original Purchase Price of such unit bears to the original aggregate Purchase Price of all the Equipment) as the unpaid CSA Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date such Casualty Value is determined bears to the original CSA Indebtedness. The Casualty Value of each replacement unit shall be deemed to be that amount which bears the same ratio to the cost thereof as of the date of acquisition by the Vendor of such replacement unit as the unpaid CSA Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date such Casualty Value is determined bears to the unpaid CSA Indebtedness (without giving effect to any such prepayments) as of the date of acquisition by the Vendor of such replacement unit.

The Railroad will cause any replacement unit or units to be marked as provided in Article 7 hereof. Any and all replacements of Equipment or parts thereof shall

constitute accessions to the Equipment and shall be subject to all appropriate terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement; provided, however, that nothing herein shall result in the Builder having any liability or obligation with respect to any replacement unit or units or parts thereof not manufactured or sold by it. Title to all such replacement units and parts shall be taken initially and shall remain in the name of the Vendor subject to the provisions hereof, and the Railroad shall execute, acknowledge, deliver, file, record or deposit all such documents (including the filing of a supplement to this Agreement with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303) and do any and all such acts as may be necessary to cause such replacement units to come under and be subject to this Agreement. All such replacement units and parts shall be guaranteed and warranted in like manner as is customary at the time for similar equipment.

In order to facilitate the sale or other disposition of any Equipment suffering a Casualty Occurrence, the Vendor shall, upon request of the Railroad, after full satisfaction by the Railroad of its obligations hereunder in respect of the Casualty Value of such Equipment, execute and deliver to the Railroad or the Railroad's vendee, assignee or nominee, a bill of sale (without warranties) for such Equipment, and such other documents as may be required to release such Equipment or part thereof from the terms and scope of this Agreement, in such form as may be reasonably requested by the Railroad.

The Railroad will at all times prior to the payment of the full indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon and all other payments required hereby, at its own expense, cause to be carried and maintained insurance in respect of the Equipment at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by railroad companies on or in respect of similar equipment, and in any event in amounts and against risks comparable to those insured against by the Railroad on or in respect of similar equipment owned by it.

ARTICLE 9. Maintenance; Compliance with Laws and Rules. Except as provided in Article 8 hereof, the Railroad

will at all times maintain the Equipment or cause the Equipment to be maintained in good order and repair at its own expense.

During the term of this Agreement, the Railroad will at all times comply in all respects with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of any part on any unit of the Equipment, the Railroad will conform therewith, at its own expense; provided, however, that the Railroad may in good faith contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 10. Reports and Inspections. So long as any of the CSA Indebtedness shall be outstanding hereunder, on or before March 31 in each year, commencing with the calendar year 1982, the Railroad shall furnish to the Vendor an accurate statement signed by an officer of the Railroad (A) setting forth as at the preceding December 31 the total number, description and identifying numbers of all units of the Equipment (i) that have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Agreement in the case of the first such statement), and (ii) that are undergoing repairs or have been withdrawn from service for repairs (other than running repairs), and containing such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (B) stating that, (i) in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 7 hereof have been preserved or replaced and (ii) the insurance which the Railroad is required to carry and maintain pursuant to the last paragraph of Article 8 hereof is in effect. The Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

So long as any CSA Indebtedness shall be unpaid, the Railroad will deliver to the Vendor, (i) as soon as available, and in any event within 60 days after the end of the applicable accounting period, two copies of the consolidated balance sheet of the Railroad as of the end of its respective first, second and third quarterly accounting periods in each fiscal year and two copies of the related consolidated statements of income and retained earnings of the Railroad for the portion of its fiscal year ended with the last day of its quarterly accounting period, all in reasonable detail, certified by any Vice President or the Treasurer of the Railroad and stating in comparative form the figures for the corresponding date and period in the previous fiscal year, (ii) as soon as available, and in any event within 120 days after the end of each fiscal year, copies, in comparative form with the preceding fiscal year, of the consolidated balance sheet of the Railroad as at the end of such fiscal year, and of the consolidated statements of income and retained earnings of the Railroad for such fiscal year, all in reasonable detail and stating in comparative form the consolidated figures as of the end of and for the previous fiscal year, and certified by the Railroad's independent public accountants who shall be of recognized national standing and (iii) as soon as available, copies of all material regular and periodic reports to the Securities and Exchange Commission and the Interstate Commerce Commission, including each Annual Report, which are required to be filed by the Railroad. The Railroad further agrees to furnish to the Vendor (x) immediately upon becoming aware of the existence of a Default, a written notice which specifies the nature of the Default (as defined in Article 8 hereof) and what action the Railroad is taking or proposes to take with respect thereto and (y) with reasonable promptness, such other data as from time to time may be reasonably requested.

The Railroad will permit the Vendor and any representatives of the Vendor to discuss the affairs, finances and accounts of the Railroad with its principal officers all at such reasonable times and as often as may be requested.

ARTICLE 11. Possession and Use. The Railroad, so long as an event of default shall not have occurred under this Agreement and be continuing, shall be entitled to the possession of the Equipment and the use thereof upon the lines or routes owned or operated by it either alone or

jointly with others and whether under lease or otherwise, or upon the lines or routes owned or operated by any carrier controlled by, or under common control with, the Railroad, or over which it or any affiliate has trackage rights, or upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, from and after delivery of the Equipment by the Builder to the Railroad, but only upon and subject to all the terms and conditions of this Agreement. In addition, the Railroad may transfer its rights hereunder with respect to the Equipment or any unit thereof to one or more wholly owned railroad subsidiaries and may lease the Equipment to one or more railroad affiliates or, under a written lease for a term not exceeding six months (including all renewal or extension options reserved to the lessee or lessor), to a responsible company, as determined by the Railroad, in any such case without being released from its obligations under this Agreement and subject to all the rights and remedies of the Vendor hereunder. The Railroad may receive and retain compensation for such uses and leases from other carriers or companies so using or leasing any unit or units of the Equipment. The Railroad will not permit any unit of the Equipment to be put in service involving the regular operation and maintenance thereof outside the United States of America, except in the usual interchange of traffic.

ARTICLE 12. Prohibition Against Liens. The Railroad will pay or discharge any and all sums claimed by any party from, through or under the Railroad, its successors or assigns which, if unpaid, might become a lien, charge or security interest on the Equipment, or any unit thereof, equal or superior to the Vendor's title thereto or property therein; provided, however, that the Railroad shall be under no obligation to pay or discharge any such claim so long as it is contesting in good faith and by appropriate legal proceedings such claim and the nonpayment thereof does not, in the opinion of counsel for the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment until reimbursed therefor by the Railroad or otherwise shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent,

or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 13. Railroad's Indemnities. The Railroad agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Vendor of title to the Equipment hereunder, the use and operation thereof by the Railroad during the period when title thereto remains in the Vendor or the transfer of title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

ARTICLE 14. Builder's Warranties of Material and Workmanship; Patent Indemnities. The agreement of the parties relating to the Builder's warranty of material and workmanship is set forth in Item 2 of Schedule A hereto and the agreement of the parties relating to patent indemnification is set forth in Item 3 of said Schedule A. Such patent indemnification provisions shall continue in full force and effect notwithstanding the full payment of all sums under this Agreement or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

ARTICLE 15. Assignments. Except as provided in Article 11 hereof, the Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Vendor. A sale, assignment, transfer or disposition to a railroad company organized under the laws of the United States of America or any of the states thereof which shall acquire all or substantially all the lines of railroad of the Railroad, and which, by execution of an appropriate instrument satisfactory to the Vendor, shall assume and agree to perform each of and all the obligations and covenants of the Railroad under this Agreement, shall not be deemed a breach of this covenant.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to

receive the payments herein provided to be made by the Railroad, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to deliver the Equipment in accordance with this Agreement or to respond to its warranties and indemnities contained or referred to in Article 14 hereof, or relieve the Railroad of any of its obligations to the Builder or the Vendor under Articles 2, 3, 4, 5, 13 and 14 hereof and this Article 15 or of any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and post-office address of the assignee, and such assignee shall by virtue of such assignment acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Railroad of the notification of any such assignment, all payments thereafter to be made by the Railroad under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Railroad recognizes that it is the custom to assign conditional sale agreements and understands that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Railroad expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder and for the purpose of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder with respect to the Equipment or the specifications, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or

liability at any time owing to the Railroad by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the Builder.

In the event of any such assignment or successive assignments by the Vendor, the Railroad will, if necessary and upon request of the assignee, change the markings on each side of each unit of the Equipment so as to be consistent with the interests of the assignee in the Equipment. The cost of such markings in the event of an assignment of not less than all the Equipment at the time covered by this Agreement shall be borne by the Railroad and, in the event of an assignment of less than all such Equipment, such cost shall be borne by such assignee.

The Railroad will (a) in connection with any settlement for the Equipment subsequent to such assignment, deliver to the assignee, at the time of delivery of notice fixing the Closing Date for such Equipment, all documents required by the terms of such assignment to be delivered to such assignee by the Railroad in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, and (b) furnish to such assignee such number of counterparts of any other certificate or paper required from the Railroad by the Vendor as may reasonably be requested.

If this Agreement shall have been assigned by the Builder and the assignee shall not make payment to the Builder as provided in the instrument making such assignment, the Builder will promptly notify the Railroad of such event and, if such amount shall not have been previously paid by such assignee, the Railroad will, except as provided in the purchase order for such Equipment, not later than 90 days after the date such payment was due, pay or cause to be paid to the Builder the aggregate unpaid Purchase Price of the units, together with interest from the date such payment was due to the date of payment by the Railroad at the prime rate of interest of Chemical Bank in effect on the date such payment was due.

ARTICLE 16. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Railroad shall fail to pay in full any indebtedness in respect of the Purchase Price of the

Equipment or any other sum payable by the Railroad as provided in this Agreement on the day on which payment thereof shall be due hereunder; or

(b) the Railroad shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment, on its part to be kept or performed or to make provision satisfactory to the Vendor for such compliance; or

(c) a petition for reorganization under Title 11 of the United States Code, as now constituted or hereafter amended, shall be filed by or against the Railroad and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees, within 60 days after such petition shall have been filed; or

(d) any other proceeding shall be commenced by or against the Railroad for any relief under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or a receiver or receivers appointed (whether or not subject to ratification) for the Railroad or for its property in connection with any such proceedings in such manner

that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced; or

(e) the Railroad shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Railroad and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, declare (a "Declaration of Default") the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. The Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Railroad wherever situated. The Railroad shall promptly notify the Vendor of any event which has come to its attention which constitutes, or which with the giving of notice or lapse of time, or both, could constitute, an event of default under this Agreement.

The Vendor may at its election waive any such event of default and its consequences and rescind and annul any Declaration of Default by notice to the Railroad in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default had been made. Notwithstanding the provisions of this paragraph, it is expressly agreed by the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 17. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, subject to compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken by its agent or agents immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Railroad or any other person and for such purpose may enter upon the Railroad's premises or any other premises where the Equipment may be located (without judicial process if this can be done without breach of the peace) and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad.

In case the Vendor rightfully shall demand possession of the Equipment pursuant to this Agreement and shall reasonably designate a point or points upon the premises of the Railroad for the delivery of the Equipment to the Vendor, the Railroad shall, at its own expense, forthwith and in the usual manner (including, without limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any part of the Equipment has been interchanged to return the Equipment so interchanged), cause the Equipment to be moved to such point or points on its lines as shall be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Railroad until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent or storage, the necessary facilities at any reasonable point or points selected by the Vendor and to permit inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking pursuant to this Agreement of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may at its election and upon such notice as is hereinafter set forth retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Railroad by telegram or registered mail, addressed as provided in Article 21 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Railroad's rights in the Equipment shall thereupon terminate and all payments made by the Railroad may be retained by the Vendor as compensation for the use of the Equipment by the Railroad; provided, however, that if the Railroad, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing and maintaining the Equipment and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad; provided, further, that if the Railroad or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Railroad and to any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims

of the Railroad or any other party claiming from, through or under the Railroad at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Railroad should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, maintaining, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad. The proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, maintaining, holding, preparing for sale and selling the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Railroad shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 21 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation, or a sale where fewer than 40 corporate offerees have been solicited in writing to submit bids), it shall be subject to the right of the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Vendor or the Railroad may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Railroad (except to the extent of any surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of the sums due to the Vendor from the Railroad hereunder.

From and after the date of any such sale, the Railroad shall pay to the Vendor the per diem interchange for each unit of Equipment which shall not have been assembled, as hereinabove provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser at such sale.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Vendor's rights or the Railroad's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Vendor upon demand, together with interest from the date of such demand to the date of payment by the Railroad at the rate per annum set forth in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable and, if the Railroad shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Railroad.

The Railroad will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the

event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 18. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Railroad to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Railroad, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, and any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 19. Recording, etc. The Railroad will, at its own expense, cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303. The Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file, refile, register, deposit, record and rerecord any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its interests in and to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement. The Railroad will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

This Agreement creates a security interest for

the benefit of the Vendor in the Equipment the possession and use of which has been or will be transferred to the Railroad, which security interest secures payment and performance by the Railroad of its obligations under this Agreement.

ARTICLE 20. Payment of Expenses. The Railroad will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Builder) incident to this Agreement and the first assignment of this Agreement (including the fees and expenses of an agent or any successor agent, if the first assignee is an agent), and any instrument supplemental or related hereto or thereto, and all fees and expenses of Messrs. Cravath, Swaine & Moore, as special counsel for the first assignee of this Agreement and for any party initially acquiring interests in such first assignment, and all reasonable legal expenses in connection with the transfer by any party of interests acquired in such first assignment.

ARTICLE 21. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) to the Railroad, at 114 West Eleventh Street, Kansas City, Missouri 64105,

(b) to the Builder, at its address specified in Item 1 of Schedule A hereto, and

(c) to any assignee of the Vendor or of the Railroad, at such address as may have been furnished in writing to each of the other parties hereto by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 22. Article Headings; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Schedules hereto, exclusively states the rights of the Vendor and the Railroad with respect to the Equipment and, except to the extent expressly provided in the third paragraph of Article 3 hereof and the final paragraph of Article 15 hereof, supercedes all other agreements, oral or written, with respect to

the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Vendor and the Railroad.

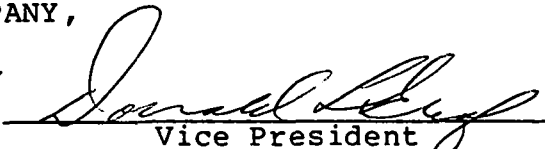
ARTICLE 23. Law Governing. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Missouri; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof, as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, including any Federal law in respect of the same, and any rights arising out of the marking of the units of Equipment as provided in Article 7 hereof.

ARTICLE 24. Execution. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated as of the date first set forth above, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by their officers, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

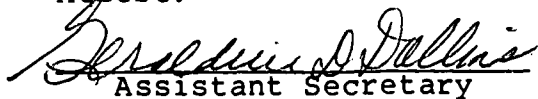
THE KANSAS CITY SOUTHERN RAILWAY
COMPANY,

by


Vice President

[Corporate Seal]

Attest:


Assistant Secretary

GENERAL MOTORS CORPORATION
(Electro-Motive Division),

by

[Corporate Seal]

Attest:

Assistant Secretary

STATE OF MISSOURI,)
) ss.:
COUNTY OF JACKSON,)

On this 25th day of November 1981, before me personally appeared Donald L. Drap, to me personally known, who, being by me duly sworn, says that he is Vice President of THE KANSAS CITY SOUTHERN RAILWAY COMPANY, that the corporate seal of said Corporation is affixed to the foregoing instrument, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

[NOTARIAL SEAL]

Irene Paulhe
Notary Public
IRENE PAULHE
Notary Public - State of Missouri
Commissioned in Platte County
My Commission Expires March 22, 1983

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this day of November 1981, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

[NOTARIAL SEAL]

Notary Public

My Comission Expires

SCHEDULE A

Item 1: General Motors Corporation (Electro-Motive Division), a Delaware corporation, La Grange, Illinois 60525.

Item 2: General Motors Corporation (Electro-Motive Division) (hereinafter in this Schedule A called "GM") warrants that its Equipment is of the kind and quality described in, and will be built in accordance with, the Specifications referred to in Article 2 of this Agreement and is suitable for the ordinary purposes for which such Equipment is used and warrants each unit of such Equipment to be free from defects in material and workmanship which may develop under normal use and service within two years from date of delivery of such unit or before such unit has been operated 250,000 miles, whichever event shall first occur. GM agrees to correct such defects, which examination shall disclose to GM's satisfaction to be defective, by repair or replacement F.O.B. factory and such correction shall constitute fulfillment of GM's obligation with respect to such defect under this warranty. GM warrants specialties not of its own specification or design to the same extent that the suppliers of such specialties warrant such items to GM. GM further agrees with the Railroad that neither the inspection as provided in Article 3 of this Agreement, nor any examination, nor the acceptance of any units of its Equipment as provided in said Article 3 shall be deemed a waiver or modification by the Railroad of any of its rights under this Item 2.

THERE ARE NO WARRANTIES WITH RESPECT TO MATERIAL AND WORKMANSHIP, EXPRESSED OR IMPLIED, MADE BY GM EXCEPT THE WARRANTIES SET OUT ABOVE.

Item 3: GM shall defend any suit or proceeding brought against the Railroad and/or each assignee of GM's right under this Agreement so far as the same is based on a claim that the Equipment of GM's specification, or any part thereof, furnished under this

Agreement constitutes an infringement of any patent, if notified promptly in writing and given authority, information and assistance (at GM's expense) for the defense of same, and GM shall pay all damages and costs awarded therein against the Railroad and/or any such assignee.

In case any unit of such Equipment, or any part thereof, is in such suit held to constitute infringement and the use of such unit or part is enjoined, GM shall at its option and at its own expense either procure for the Railroad and any such assignee the right to continue using such unit or part, or replace the same with noninfringing equipment subject to this Agreement, or modify it so it becomes noninfringing, or remove such unit and refund the Purchase Price and the transportation and installation costs thereof. If the Purchase Price is so refunded, such refund shall be made to the assignee of GM's rights under this Agreement if this Agreement has been so assigned, which refund, to the extent of the unpaid CSA Indebtedness, shall be applied in like manner as payments in respect of Casualty Occurrences under Article 8 of this Agreement and, as long as no event of default or event which with the lapse of time and/or demand could constitute an event of default under this Agreement shall have occurred and be continuing, the balance shall be paid by such assignee to the Railroad.

GM will assume no liability for patent infringement by reason of purchase, manufacture, sale or use of devices not included in and covered by its specification. The foregoing states the entire liability of GM for patent infringement by the Equipment or any part thereof.

SCHEDULE B

<u>Type</u>	<u>Builder's Specifications</u>	<u>AAR Mechanical Designation</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Railroad Road Numbers</u>	<u>Unit Base Price</u>	<u>Total Delivered Price</u>	<u>Estimated Time and Place of Delivery</u>
GP 40-2 Road Locomotives	8091	B-B	McCook, Illinois	2	KCS 796 KCS 797	\$799,080.00	\$1,608,015.60	Bloomburg, Texas November, 1981
10 SD-50 Road Locomotives	8115	C-C	McCook, Illinois	10	KCS 704- 713	\$954,310.00	<u>\$9,616,318.96</u> \$11,224,334.56	Bloomburg, Texas November, 1981

CONDITIONAL SALE AGREEMENT

Dated as of November 30, 1981

Between

GENERAL MOTORS CORPORATION
(Electro-Motive Division),

and

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

(Covering 2 GP-40-2 Road Locomotives and 10 SD-10 Road Locomotives)

CONDITIONAL SALE AGREEMENT

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Note: This Table of Contents is for convenience of reference and is not part of the Agreement.

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CONDITIONAL SALE AGREEMENT, dated as of November 30, 1981, between GENERAL MOTORS CORPORATION (Electro-Motive Division) (the "Builder" or the "Vendor" as the context may require, all as more particularly set forth in Article 1 hereof), and THE KANSAS CITY SOUTHERN RAILWAY COMPANY, a Missouri corporation (the "Railroad").

WHEREAS the Builder has agreed to construct, sell and deliver to the Railroad, and the Railroad has agreed to purchase, the railroad rolling stock equipment described in Schedule B attached hereto (the "Equipment") subject to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Definitions. The term "Vendor", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, GENERAL MOTORS CORPORATION (Electro-Motive Division) and any successor or successors for the time being to its manufacturing properties and businesses, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment. The term "Builder", whenever used in this Agreement, means, both before and after any such assignment, GENERAL MOTORS CORPORATION (Electro-Motive Division) and any successor or successors for the time being to its manufacturing properties and businesses.

ARTICLE 2. Sale and Purchase. Subject to the terms and conditions set forth in this Agreement, the Builder shall construct the units of the Equipment at its plant set forth in Schedule B hereto and will sell and deliver to the Railroad, and the Railroad will purchase from the Builder and accept delivery of and pay for (as hereinafter provided), such Equipment, each unit of which shall have been constructed in accordance with the specifications set forth therefor in Schedule B hereto and in accordance with such modifications thereof as may have been or may be agreed upon in writing between the Builder and the Railroad (which specifications

and modifications, if any, are hereinafter called the "Specifications"). The Builder represents and warrants that the design, quality and component parts of each unit of the Equipment shall conform, on the date of delivery of each thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards, if any, recommended by the Association of American Railroads reasonably interpreted as being applicable to equipment of the character of such units of the Equipment, and each unit of the Equipment will be standard gauge railroad rolling stock equipment.

ARTICLE 3. Inspection and Delivery. The Builder will deliver the units of the Equipment to the Railroad at the place or places specified in Schedule B hereto (or if Schedule B does not specify a place or places, at the place or places designated from time to time by the Railroad), freight charges, if any, prepaid, in accordance with the delivery schedule set forth in Schedule B hereto; provided, however, that the Builder shall have no obligation to deliver any unit of the Equipment hereunder at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 16 hereof or after any event of default (as described in Article 16 hereof), or event which with the lapse of time or demand, or both, could constitute such an event of default, shall have occurred and be continuing.

The Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

Notwithstanding the preceding provisions of this Article 3, (1) any Equipment not delivered, accepted and settled for pursuant to Article 4 hereof on or before the Cut-Off Date (as defined in Article 4 hereof) shall be excluded herefrom and (2) if the aggregate Invoiced Purchase Prices (as defined in Article 4 hereof) of all Equipment previously settled for under this Agreement exceeds \$11,225,000, the Railroad may exclude herefrom any units of Equipment not theretofore settled for under this Agreement. If any unit or units of Equipment shall be excluded from this Agreement pur-

suant to the immediately preceding sentence, the Railroad and the Builder shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom. Except to the extent otherwise expressly provided in the purchase order or orders covering the Equipment, the Railroad shall nevertheless be obligated to accept any Equipment excluded from this Agreement and pay the full purchase price therefor, determined as provided in this Agreement, if and when such Equipment shall be completed and delivered by the Builder, such payment to be in cash within 30 days following the later of the delivery of, or the presentation of the invoice for, such Equipment, either directly or, in case the Railroad shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Railroad shall determine and as shall be reasonably acceptable to the Builder.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Railroad and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder agrees to inspect all materials used in the construction of its Equipment in accordance with the standard quality control practices of the Builder. Upon completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Railroad for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, on or prior to the Closing Date (as defined in Article 4 hereof) hereunder in respect of each such unit of Equipment acquired by the Railroad, such inspector or an authorized representative or an officer of the Railroad shall execute and deliver to the Builder a certificate of acceptance (a "Certificate of Acceptance") stating, on behalf of the Railroad, that such unit or units have been inspected and accepted by the Railroad under this Agreement and are marked in accordance with Article 7 hereof; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 14 hereof.

On delivery of each such unit hereunder at the place specified for delivery, the Railroad will assume the responsibility and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of such unit; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 14 hereof.

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Schedule B hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Builder and the Railroad. The term "Purchase Price" as used herein for any unit of the Equipment shall mean the base price or prices as so increased or decreased.

For the purpose of making settlement, the Equipment of the Builder shall be divided into groups of units of the Equipment, delivered to and accepted by the Railroad during a period of not less than 30 days (each such group being hereinafter called a Group), or otherwise as the Builder, the Railroad and the Vendor may agree to.

The Railroad hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) on each Closing Date (as hereinafter defined) with respect to each Group the amount, if any, by which (x) the aggregate Purchase Price of all units of the Equipment covered by this Agreement for which settlement has theretofore or is then being made, as stated in the invoice or invoices presented (said invoiced prices being herein called the Invoiced Purchase Prices), exceeds (y) the sum of \$11,225,000 and any amount or amounts previously paid or payable by the Railroad with respect to the Invoiced Purchase Prices pursuant to this subparagraph (a); and

(b) in 30 equal consecutive semiannual installments, as hereinafter provided, an amount equal to the aggregate of the Invoiced Purchase Prices of all Groups less the amount, if any, paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph (the aggregate of said installments being hereinafter called the "CSA Indebtedness").

If this Agreement shall be assigned by the Builder, the obligations of the Railroad under subparagraph (a) of the preceding paragraph of this Article 4 shall be an unsecured obligation and the Builder shall not have any lien on, or claim against, the Equipment or any part thereof with respect to such obligations.

The installments of the CSA Indebtedness shall be payable semiannually, in immediately available funds, on June 1 and December 1 in each year commencing June 1, 1982, to and including December 1, 1996 (or if any such date is not a business day (as hereinafter defined), on the next succeeding business day with interest at the rate per annum specified below), each such date being hereinafter called a "Payment Date". The unpaid portion of the CSA Indebtedness shall bear interest from the Closing Date on which such indebtedness was incurred at a rate of interest per annum for each Interest Period equal to the Floating Rate. For purposes hereof, (i) "Interest Period" shall mean with respect to any CSA Indebtedness (a) initially, the period from the Closing Date in respect of which such CSA Indebtedness was incurred and ending on November 30, 1981; provided that (x) if such date is not a Banking Day, such Interest Period shall be extended to the next succeeding Banking Day, unless such next succeeding Banking Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Banking Day, (y) any Interest Period which begins on the last Banking Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month during which such Interest Period is to end) shall end on the last Banking Day of the calendar month during which such Interest Period is to end and (z) interest shall accrue from and including the first day of each Interest Period to but excluding the last day of such Interest Period, and (b) thereafter, each period commencing on the last day of the next preceding Interest Period applicable to such CSA Indebtedness and ending on the numerically corresponding day in the calendar month 1 month, 3 months, 6 months or 12 months thereafter, as the Railroad shall select in the notice given pursuant to (b) below, or if the Railroad shall fail to so select, 1 month; provided, as aforesaid; provided further, that if the unpaid principal amount of the CSA Indebtedness to which such Interest Period is to apply is required to be paid on the next succeeding Payment Date, such Interest Period shall end no later than such Payment Date; (ii) "Floating Rate" shall mean (a) the LIBOR Rate plus 1/2 of 1% or (b) the Prime Rate, as the Railroad shall select by giving written or telex notice to Chemical Bank ("Chemical") not later than 12:00 noon New York City time on the day three Banking Days prior to each Interest Period, or if the Railroad shall fail to so select, the Prime Rate; (iii) "Banking Day" shall mean any day other than a Saturday, Sunday or legal holiday on which banks are open for business (including dealings in dollar deposits) in New York City and

in the London Interbank Market; (iv) "Prime Rate" shall mean the rate per annum announced by Chemical from time to time as being in effect for prime commercial domestic loans of 90-day maturities (for purposes of this Agreement, any change in the Prime Rate shall be effective on the date such change is announced by Chemical); and (v) "LIBOR Rate" with respect to any Interest Period, shall mean an interest rate (rounded upwards, if necessary, to the next 1/100th of 1%) equal to the rate at which dollar deposits are offered in immediately available funds in the London Interbank Market to the London office of Chemical by leading banks in the London Interbank Market at 11:00 a.m., London time, two Banking Days prior to the commencement of such Interest Period for deposits in dollars approximately comparable in principal amount to the unpaid principal amount of the CSA Indebtedness to which such Interest Period is to apply and for the maturity comparable to the applicable Interest Period. Each determination of the LIBOR Rate shall be made by Chemical and shall be conclusive absent manifest error.

Interest on the unpaid balance of the CSA Indebtedness shall be payable to the extent accrued (i) on portions of the CSA Indebtedness as to which the Prime Rate applies, on each June 1 and December 1 commencing June 1, 1982, and (ii) on portions of the CSA Indebtedness as to which the LIBOR Rate applies, on the last date of the applicable Interest Period (provided that if such Interest Period shall be greater than six months in duration, interest shall be payable on the dates referred to in (i) commencing with the first of such dates after the commencement of such Interest Period, and on the last date of such Interest Period).

In the event that, on each occasion, on the day two Banking Days prior to the commencement of any Interest Period, Chemical shall have determined (which determination shall be conclusive and binding on the Railroad) that dollar deposits in the applicable amounts are not generally available in the London Interbank Market, or that the rate at which such dollar deposits are being offered will not adequately and fairly reflect the cost to Chemical of making and maintaining its investment in the CSA Indebtedness pursuant to the Finance Agreement (its "Investment"), or that reasonable means do not exist for ascertaining the LIBOR Rate, Chemical shall as soon as practicable thereafter give written or telex notice of such determination to the Railroad. If such notice shall have been given and until the circumstances giving rise to such notice no longer exist, the Floating Rate

shall be the Prime Rate. Each determination of Chemical hereunder shall be conclusive absent manifest error.

Since the cost to Chemical of making or maintaining the Investment may fluctuate as a result of imposition of, or changes in, the reserve requirements promulgated by the Board of Governors of the Federal Reserve System of the United States, including, but not limited to any reserve on Eurocurrency Liabilities as defined by Regulation D at the ratios provided in such Regulation from time to time, it is hereby agreed that the Investment shall be deemed to constitute a Eurocurrency Liability (as defined in such Regulation). Such Eurocurrency Liability shall further be deemed to be subject to such reserve requirements without benefit of or credit for proration, exceptions or offsets which may otherwise be available to Chemical from time to time under such Regulation. The Railroad shall pay to Chemical such additional amount or amounts as will compensate it for the effect of such reserve requirements as determined by Chemical on the basis of such reserve requirements applicable to it, which determination shall be conclusive absent manifest error.

Notwithstanding any other provision herein, if after the date of this Agreement any change in applicable law or regulation or in the interpretation or administration thereof by any governmental authority charged with the interpretation or administration thereof (whether or not having the force of law) shall change the basis of taxation of payments to Chemical with respect to the Investment (other than taxes imposed on the overall net income of Chemical by the jurisdiction in which Chemical has its principal office or by any political subdivision or taxing authority therein), or shall impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, Chemical, or shall impose on Chemical or the London Interbank Market any other condition affecting the Investment and the result of any of the foregoing shall be to increase the cost to Chemical of making or maintaining the Investment or to reduce the amount of any sum received or receivable by Chemical in respect thereof, by an amount deemed by Chemical to be material, then (but without duplication for payments otherwise required under this Agreement), the Railroad shall pay to Chemical, upon Chemical's demand, such additional amount or amounts as will compensate Chemical for such additional cost or reduction. A certificate

of Chemical setting forth the basis for the determination from time to time of such amount or amounts as shall be necessary to compensate Chemical as specified in this paragraph shall be delivered to the Railroad and shall be conclusive absent manifest error. Failure on the part of Chemical to demand compensation for any increased costs in any Interest Period shall not constitute a waiver of the Chemical's rights to demand compensation for any increased costs in any other Interest Period. Chemical's right to any additional compensation for increased costs due under this paragraph shall be absolute and shall not be subject to any contention of invalidity or inapplicability of the law or regulation or the interpretation or administration thereof imposing such increased costs on Chemical.

Notwithstanding anything to the contrary herein contained, if any change in any law or regulation or in the interpretation thereof by any governmental authority charged with the administration or interpretation thereof shall make it unlawful for Chemical to make or maintain the Investment at the LIBOR Rate, Chemical may, by written notice to the Railroad, declare that the Floating Rate shall thereafter be the Prime Rate. For purposes of this paragraph, a notice to the Railroad by Chemical shall be effective, if lawful, on the last day of the then current Interest Period or, if there are then more than one current Interest Period, on the last day of each such Interest Period, respectively, otherwise, such notice shall be effective on the date of receipt by the Railroad.

The Railroad shall indemnify Chemical against any loss or expense which Chemical may sustain or incur as a consequence of any change in the Floating Rate described in the preceding paragraph or as a consequence of any prepayment of the CSA Indebtedness (including any loss incurred or to be incurred by it in the reemployment of funds released by any prepayment).

The term "Closing Date" with respect to any Group of the Equipment shall mean such date (on or prior to November 30, 1981, the Cut-Off Date), not more than 15 business days following presentation by the Builder to the Railroad of the invoice and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Railroad by written notice delivered to the Vendor at least four business days prior to the Closing Date designated therein. Such notice shall set forth the number and the

Invoiced Purchase Price of the units of Equipment to be settled for on such Closing Date and the amount or amounts payable by the Vendor to the Builder pursuant to the terms of any assignment by the Builder of its rights hereunder.

The term "business days" as used herein means calendar days excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, are authorized or obligated to remain closed.

Interest under this Agreement shall be calculated on the basis of (x) on portions of the CSA Indebtedness as to which the Prime Rate applies, a 360-day year of 12 30-day months and (y) on portions of the CSA Indebtedness as to which the LIBOR Rate applies, the actual number of days elapsed in a year of 360 days.

The Railroad will pay, to the extent legally enforceable, interest at the rate of 1% per annum in excess of the applicable rate upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 8 hereof, the Railroad shall not have the privilege of prepaying any installment of its indebtedness hereunder prior to the date it becomes due.

In the event the Vendor, pursuant to Article 15 hereof, assigns the right to receive the payments herein provided to be made by the Railroad, the assignee thereof may request the Railroad to make such payments to it at such address as shall be supplied to the Railroad by the assignee.

ARTICLE 5. Taxes. All payments to be made by the Railroad hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, Federal or foreign taxes (other than net income, gross receipts [except gross receipts taxes in the nature of or in lieu of sales or use taxes], excess profits and similar taxes) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or

measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called "impositions"), all of which impositions the Railroad assumes and agrees to pay on demand. The Railroad will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the title of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Railroad shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of counsel for the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any such impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Railroad shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Railroad shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Railroad shall have approved the payment thereof.

ARTICLE 6. Title to the Equipment. Except as provided in Article 8 hereof, the Vendor shall and hereby does retain the full legal title to and property in the Equipment until the Railroad shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as provided in this Agreement. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 8 hereof, when and only when the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided,

shall have been paid, and all the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Railroad at that time, will (a) execute a bill or bills of sale for the Equipment transferring its title thereto and property therein to the Railroad, or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad at its address referred to in Article 21 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Railroad to the Equipment and (c) pay to the Railroad any money paid to the Vendor pursuant to Article 8 hereof and not theretofore applied as therein provided. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Railroad.

ARTICLE 7. Marking of the Equipment. The Railroad will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Schedule B hereto, or in the case of Equipment not there listed such identifying number as set forth in any amendment or supplement extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION" or other appropriate markings approved by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's title to and property in such Equipment and its rights under this Agreement. The Railroad will not place any such unit in operation or exercise any control or dominion over the same until such markings have been made thereon and will replace promptly any such markings which may be removed, defaced or destroyed. The Railroad will not change the identifying number of any unit of such Equipment except in accordance with a statement of new

number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor by the Railroad and filed, recorded and deposited by the Railroad in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Railroad will not allow the name of any person, association or corporation (other than the Vendor) to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Railroad may cause the Equipment to be lettered with the names or initials or other insignia of the Railroad or its affiliates.

ARTICLE 8. Casualty Occurrences; Prepayment of CSA Indebtedness; Insurance. In the event that any unit of the Equipment shall be worn out, obsolete, lost, stolen, destroyed, or irreparably damaged, or otherwise rendered permanently unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called "Casualty Occurrences"), and in the event that the total Casualty Value (as hereinafter defined) of units that shall have suffered a Casualty Occurrence shall exceed \$50,000 (exclusive of units having suffered a Casualty Occurrence with respect to which a written notice shall have been given to the Vendor pursuant to this Article 8), the Railroad shall promptly (after it has knowledge of such Casualty Occurrence) and fully inform the Vendor in regard thereto by written notice. When the aggregate Casualty Value of all units having suffered a Casualty Occurrence (exclusive of units having suffered a Casualty Occurrence with respect to which a payment shall have been made to the Vendor pursuant to this Article 8) shall exceed \$200,000, the Railroad shall on the next date for the payment of principal or interest on the CSA Indebtedness occurring at least 30 days after it has knowledge of such event, pay to the Vendor a sum equal to the aggregate Casualty Value of such units of the Equipment as of the date of such payment and shall file with the Vendor a certificate of an officer of the Railroad setting forth such Casualty Value; provided, however, that if a proceeding specified in clause (c) or (d) of Article 16 hereof shall have been commenced or an event of default or event which with notice, lapse of time and/or demand or failure to take action provided for in Article 16 hereof shall have occurred and be continuing (any such commencement, event of default or event being herein called a "Default"), the Railroad shall forthwith after it has knowledge of any Casualty

Occurrence pay to the Vendor a sum equal to the aggregate Casualty Value of each unit of the Equipment suffering a Casualty Occurrence as of the date of such payment. Any money paid to the Vendor pursuant to this Article 8 shall be applied on the date of receipt thereof to the prepayment of the installments of the CSA Indebtedness in the inverse order of maturity, without premium. The Railroad shall also pay to the Vendor on the date of any such prepayment the unpaid interest accrued hereunder in respect of the CSA Indebtedness so prepaid.

So long as no Default shall have occurred and be continuing, the Railroad may, at any time after it has informed the Vendor in regard to a Casualty Occurrence, cause to be transferred to the Vendor a replacement unit or units of new standard-gauge railroad rolling stock (other than passenger or work equipment) to replace units suffering a Casualty Occurrence and receive credit therefor in an amount equal to the cost thereof (as evidenced by the invoice therefor specified in the next paragraph) against any Casualty Value payment it might otherwise be required to make in respect of the unit or units which shall have suffered the Casualty Occurrence. Such unit or units of replacement equipment shall have a useful life at least as long as that which the Equipment described in Schedule B hereto would have had on the date of such replacement but for the Casualty Occurrence.

Whenever the Railroad shall cause any unit of replacement equipment to be transferred to the Vendor in lieu of making all or any part of any Casualty Value payment, the Railroad shall deliver to the Vendor at the time of transfer of such replacement unit bills of sale, invoices and certificates of acceptance, substantially in the form provided by the first assignment of this Agreement by the Builder, together with:

(1) a certificate of an officer of the Railroad certifying (i) that such replacement unit is new "standard gauge" railroad rolling stock (other than passenger or work equipment), (ii) the date such unit was first put into service, (iii) that such unit has a useful life at least as long as the Equipment of the type described in Schedule B hereto would have had but for the Casualty Occurrence and has been marked as required by the provisions of this Article 8 and (iv) the cost thereof;

(2) an opinion of counsel for the Railroad that title to such replacement unit is vested in the Vendor free and clear from all claims, liens, security interests and other encumbrances except the rights of the Railroad under this Agreement, that such unit has come under and become subject to this Agreement pursuant to a supplement hereto, that all necessary filings have been made to perfect the interests of the Vendor therein and that, in the event of the filing of a petition for the reorganization of the Railroad pursuant to Title 11 of the United States Code, the Vendor shall have the benefits of 11 U.S.C. § 1168 (as now in effect or as hereafter amended) with respect to such replacement unit; and

(3) an executed counterpart of the supplement referred to in clause (2) above stamped to show filing under 49 U.S.C. § 11303.

The Casualty Value of each unit of the Equipment (other than a replacement unit) shall be deemed to be that amount which bears the same ratio to the original Purchase Price thereof (less, in the event that the Railroad shall have made any payment or payments under the provisions of subparagraph (a) of the third paragraph of Article 4 hereof, an amount which bears the same ratio to the aggregate of all such payments as the original Purchase Price of such unit bears to the original aggregate Purchase Price of all the Equipment) as the unpaid CSA Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date such Casualty Value is determined bears to the original CSA Indebtedness. The Casualty Value of each replacement unit shall be deemed to be that amount which bears the same ratio to the cost thereof as of the date of acquisition by the Vendor of such replacement unit as the unpaid CSA Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date such Casualty Value is determined bears to the unpaid CSA Indebtedness (without giving effect to any such prepayments) as of the date of acquisition by the Vendor of such replacement unit.

The Railroad will cause any replacement unit or units to be marked as provided in Article 7 hereof. Any and all replacements of Equipment or parts thereof shall

constitute accessions to the Equipment and shall be subject to all appropriate terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement; provided, however, that nothing herein shall result in the Builder having any liability or obligation with respect to any replacement unit or units or parts thereof not manufactured or sold by it. Title to all such replacement units and parts shall be taken initially and shall remain in the name of the Vendor subject to the provisions hereof, and the Railroad shall execute, acknowledge, deliver, file, record or deposit all such documents (including the filing of a supplement to this Agreement with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303) and do any and all such acts as may be necessary to cause such replacement units to come under and be subject to this Agreement. All such replacement units and parts shall be guaranteed and warranted in like manner as is customary at the time for similar equipment.

In order to facilitate the sale or other disposition of any Equipment suffering a Casualty Occurrence, the Vendor shall, upon request of the Railroad, after full satisfaction by the Railroad of its obligations hereunder in respect of the Casualty Value of such Equipment, execute and deliver to the Railroad or the Railroad's vendee, assignee or nominee, a bill of sale (without warranties) for such Equipment, and such other documents as may be required to release such Equipment or part thereof from the terms and scope of this Agreement, in such form as may be reasonably requested by the Railroad.

The Railroad will at all times prior to the payment of the full indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon and all other payments required hereby, at its own expense, cause to be carried and maintained insurance in respect of the Equipment at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by railroad companies on or in respect of similar equipment, and in any event in amounts and against risks comparable to those insured against by the Railroad on or in respect of similar equipment owned by it.

ARTICLE 9. Maintenance; Compliance with Laws and Rules. Except as provided in Article 8 hereof, the Railroad

will at all times maintain the Equipment or cause the Equipment to be maintained in good order and repair at its own expense.

During the term of this Agreement, the Railroad will at all times comply in all respects with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of any part on any unit of the Equipment, the Railroad will conform therewith, at its own expense; provided, however, that the Railroad may in good faith contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 10. Reports and Inspections. So long as any of the CSA Indebtedness shall be outstanding hereunder, on or before March 31 in each year, commencing with the calendar year 1982, the Railroad shall furnish to the Vendor an accurate statement signed by an officer of the Railroad (A) setting forth as at the preceding December 31 the total number, description and identifying numbers of all units of the Equipment (i) that have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Agreement in the case of the first such statement), and (ii) that are undergoing repairs or have been withdrawn from service for repairs (other than running repairs), and containing such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (B) stating that, (i) in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 7 hereof have been preserved or replaced and (ii) the insurance which the Railroad is required to carry and maintain pursuant to the last paragraph of Article 8 hereof is in effect. The Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

So long as any CSA Indebtedness shall be unpaid, the Railroad will deliver to the Vendor, (i) as soon as available, and in any event within 60 days after the end of the applicable accounting period, two copies of the consolidated balance sheet of the Railroad as of the end of its respective first, second and third quarterly accounting periods in each fiscal year and two copies of the related consolidated statements of income and retained earnings of the Railroad for the portion of its fiscal year ended with the last day of its quarterly accounting period, all in reasonable detail, certified by any Vice President or the Treasurer of the Railroad and stating in comparative form the figures for the corresponding date and period in the previous fiscal year, (ii) as soon as available, and in any event within 120 days after the end of each fiscal year, copies, in comparative form with the preceding fiscal year, of the consolidated balance sheet of the Railroad as at the end of such fiscal year, and of the consolidated statements of income and retained earnings of the Railroad for such fiscal year, all in reasonable detail and stating in comparative form the consolidated figures as of the end of and for the previous fiscal year, and certified by the Railroad's independent public accountants who shall be of recognized national standing and (iii) as soon as available, copies of all material regular and periodic reports to the Securities and Exchange Commission and the Interstate Commerce Commission, including each Annual Report, which are required to be filed by the Railroad. The Railroad further agrees to furnish to the Vendor (x) immediately upon becoming aware of the existence of a Default, a written notice which specifies the nature of the Default (as defined in Article 8 hereof) and what action the Railroad is taking or proposes to take with respect thereto and (y) with reasonable promptness, such other data as from time to time may be reasonably requested.

The Railroad will permit the Vendor and any representatives of the Vendor to discuss the affairs, finances and accounts of the Railroad with its principal officers all at such reasonable times and as often as may be requested.

ARTICLE 11. Possession and Use. The Railroad, so long as an event of default shall not have occurred under this Agreement and be continuing, shall be entitled to the possession of the Equipment and the use thereof upon the lines or routes owned or operated by it either alone or

jointly with others and whether under lease or otherwise, or upon the lines or routes owned or operated by any carrier controlled by, or under common control with, the Railroad, or over which it or any affiliate has trackage rights, or upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, from and after delivery of the Equipment by the Builder to the Railroad, but only upon and subject to all the terms and conditions of this Agreement. In addition, the Railroad may transfer its rights hereunder with respect to the Equipment or any unit thereof to one or more wholly owned railroad subsidiaries and may lease the Equipment to one or more railroad affiliates or, under a written lease for a term not exceeding six months (including all renewal or extension options reserved to the lessee or lessor), to a responsible company, as determined by the Railroad, in any such case without being released from its obligations under this Agreement and subject to all the rights and remedies of the Vendor hereunder. The Railroad may receive and retain compensation for such uses and leases from other carriers or companies so using or leasing any unit or units of the Equipment. The Railroad will not permit any unit of the Equipment to be put in service involving the regular operation and maintenance thereof outside the United States of America, except in the usual interchange of traffic.

ARTICLE 12. Prohibition Against Liens. The Railroad will pay or discharge any and all sums claimed by any party from, through or under the Railroad, its successors or assigns which, if unpaid, might become a lien, charge or security interest on the Equipment, or any unit thereof, equal or superior to the Vendor's title thereto or property therein; provided, however, that the Railroad shall be under no obligation to pay or discharge any such claim so long as it is contesting in good faith and by appropriate legal proceedings such claim and the nonpayment thereof does not, in the opinion of counsel for the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment until reimbursed therefor by the Railroad or otherwise shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent,

or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 13. Railroad's Indemnities. The Railroad agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Vendor of title to the Equipment hereunder, the use and operation thereof by the Railroad during the period when title thereto remains in the Vendor or the transfer of title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

ARTICLE 14. Builder's Warranties of Material and Workmanship; Patent Indemnities. The agreement of the parties relating to the Builder's warranty of material and workmanship is set forth in Item 2 of Schedule A hereto and the agreement of the parties relating to patent indemnification is set forth in Item 3 of said Schedule A. Such patent indemnification provisions shall continue in full force and effect notwithstanding the full payment of all sums under this Agreement or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

ARTICLE 15. Assignments. Except as provided in Article 11 hereof, the Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Vendor. A sale, assignment, transfer or disposition to a railroad company organized under the laws of the United States of America or any of the states thereof which shall acquire all or substantially all the lines of railroad of the Railroad, and which, by execution of an appropriate instrument satisfactory to the Vendor, shall assume and agree to perform each of and all the obligations and covenants of the Railroad under this Agreement, shall not be deemed a breach of this covenant.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to

receive the payments herein provided to be made by the Railroad, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to deliver the Equipment in accordance with this Agreement or to respond to its warranties and indemnities contained or referred to in Article 14 hereof, or relieve the Railroad of any of its obligations to the Builder or the Vendor under Articles 2, 3, 4, 5, 13 and 14 hereof and this Article 15 or of any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and post-office address of the assignee, and such assignee shall by virtue of such assignment acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Railroad of the notification of any such assignment, all payments thereafter to be made by the Railroad under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Railroad recognizes that it is the custom to assign conditional sale agreements and understands that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Railroad expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder and for the purpose of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder with respect to the Equipment or the specifications, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or

liability at any time owing to the Railroad by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the Builder.

In the event of any such assignment or successive assignments by the Vendor, the Railroad will, if necessary and upon request of the assignee, change the markings on each side of each unit of the Equipment so as to be consistent with the interests of the assignee in the Equipment. The cost of such markings in the event of an assignment of not less than all the Equipment at the time covered by this Agreement shall be borne by the Railroad and, in the event of an assignment of less than all such Equipment, such cost shall be borne by such assignee.

The Railroad will (a) in connection with any settlement for the Equipment subsequent to such assignment, deliver to the assignee, at the time of delivery of notice fixing the Closing Date for such Equipment, all documents required by the terms of such assignment to be delivered to such assignee by the Railroad in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, and (b) furnish to such assignee such number of counterparts of any other certificate or paper required from the Railroad by the Vendor as may reasonably be requested.

If this Agreement shall have been assigned by the Builder and the assignee shall not make payment to the Builder as provided in the instrument making such assignment, the Builder will promptly notify the Railroad of such event and, if such amount shall not have been previously paid by such assignee, the Railroad will, except as provided in the purchase order for such Equipment, not later than 90 days after the date such payment was due, pay or cause to be paid to the Builder the aggregate unpaid Purchase Price of the units, together with interest from the date such payment was due to the date of payment by the Railroad at the prime rate of interest of Chemical Bank in effect on the date such payment was due.

ARTICLE 16. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Railroad shall fail to pay in full any indebtedness in respect of the Purchase Price of the

Equipment or any other sum payable by the Railroad as provided in this Agreement on the day on which payment thereof shall be due hereunder; or

(b) the Railroad shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment, on its part to be kept or performed or to make provision satisfactory to the Vendor for such compliance; or

(c) a petition for reorganization under Title 11 of the United States Code, as now constituted or hereafter amended, shall be filed by or against the Railroad and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees, within 60 days after such petition shall have been filed; or

(d) any other proceeding shall be commenced by or against the Railroad for any relief under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or a receiver or receivers appointed (whether or not subject to ratification) for the Railroad or for its property in connection with any such proceedings in such manner

that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced; or

(e) the Railroad shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Railroad and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, declare (a "Declaration of Default") the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. The Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Railroad wherever situated. The Railroad shall promptly notify the Vendor of any event which has come to its attention which constitutes, or which with the giving of notice or lapse of time, or both, could constitute, an event of default under this Agreement.

The Vendor may at its election waive any such event of default and its consequences and rescind and annul any Declaration of Default by notice to the Railroad in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default had been made. Notwithstanding the provisions of this paragraph, it is expressly agreed by the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 17. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, subject to compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken by its agent or agents immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Railroad or any other person and for such purpose may enter upon the Railroad's premises or any other premises where the Equipment may be located (without judicial process if this can be done without breach of the peace) and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad.

In case the Vendor rightfully shall demand possession of the Equipment pursuant to this Agreement and shall reasonably designate a point or points upon the premises of the Railroad for the delivery of the Equipment to the Vendor, the Railroad shall, at its own expense, forthwith and in the usual manner (including, without limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any part of the Equipment has been interchanged to return the Equipment so interchanged), cause the Equipment to be moved to such point or points on its lines as shall be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Railroad until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent or storage, the necessary facilities at any reasonable point or points selected by the Vendor and to permit inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking pursuant to this Agreement of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may at its election and upon such notice as is hereinafter set forth retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Railroad by telegram or registered mail, addressed as provided in Article 21 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Railroad's rights in the Equipment shall thereupon terminate and all payments made by the Railroad may be retained by the Vendor as compensation for the use of the Equipment by the Railroad; provided, however, that if the Railroad, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing and maintaining the Equipment and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad; provided, further, that if the Railroad or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Railroad and to any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims

of the Railroad or any other party claiming from, through or under the Railroad at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Railroad should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, maintaining, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad. The proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, maintaining, holding, preparing for sale and selling the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Railroad shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 21 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation, or a sale where fewer than 40 corporate offerees have been solicited in writing to submit bids), it shall be subject to the right of the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Vendor or the Railroad may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Railroad (except to the extent of any surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of the sums due to the Vendor from the Railroad hereunder.

From and after the date of any such sale, the Railroad shall pay to the Vendor the per diem interchange for each unit of Equipment which shall not have been assembled, as hereinabove provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser at such sale.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Vendor's rights or the Railroad's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Vendor upon demand, together with interest from the date of such demand to the date of payment by the Railroad at the rate per annum set forth in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable and, if the Railroad shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Railroad.

The Railroad will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the

event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 18. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Railroad to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Railroad, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, and any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 19. Recording, etc. The Railroad will, at its own expense, cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303. The Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file, refile, register, deposit, record and rerecord any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its interests in and to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement. The Railroad will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

This Agreement creates a security interest for

the benefit of the Vendor in the Equipment the possession and use of which has been or will be transferred to the Railroad, which security interest secures payment and performance by the Railroad of its obligations under this Agreement.

ARTICLE 20. Payment of Expenses. The Railroad will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Builder) incident to this Agreement and the first assignment of this Agreement (including the fees and expenses of an agent or any successor agent, if the first assignee is an agent), and any instrument supplemental or related hereto or thereto, and all fees and expenses of Messrs. Cravath, Swaine & Moore, as special counsel for the first assignee of this Agreement and for any party initially acquiring interests in such first assignment, and all reasonable legal expenses in connection with the transfer by any party of interests acquired in such first assignment.

ARTICLE 21. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) to the Railroad, at 114 West Eleventh Street, Kansas City, Missouri 64105,

(b) to the Builder, at its address specified in Item 1 of Schedule A hereto, and

(c) to any assignee of the Vendor or of the Railroad, at such address as may have been furnished in writing to each of the other parties hereto by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 22. Article Headings; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Schedules hereto, exclusively states the rights of the Vendor and the Railroad with respect to the Equipment and, except to the extent expressly provided in the third paragraph of Article 3 hereof and the final paragraph of Article 15 hereof, supercedes all other agreements, oral or written, with respect to

the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Vendor and the Railroad.

ARTICLE 23. Law Governing. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Missouri; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof, as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, including any Federal law in respect of the same, and any rights arising out of the marking of the units of Equipment as provided in Article 7 hereof.

ARTICLE 24. Execution. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated as of the date first set forth above, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by their officers, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

THE KANSAS CITY SOUTHERN RAILWAY
COMPANY,

by

[Corporate Seal]


Vice President

Attest:

Assistant Secretary

GENERAL MOTORS CORPORATION
(Electro-Motive Division),

by


VICE PRESIDENT

[Corporate Seal]

Attest:


Assistant Secretary

STATE OF MISSOURI,)
) ss.:
COUNTY OF JACKSON,)

On this day of November 1981, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is of THE KANSAS CITY SOUTHERN RAILWAY COMPANY, that the corporate seal of said Corporation is affixed to the foregoing instrument, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

[NOTARIAL SEAL]

Notary Public

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this 25th day of November 1981, before me personally appeared **P. K. HOGLUND**, to me personally known, who, being by me duly sworn, says that he is VICE PRESIDENT of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

[NOTARIAL SEAL]

Notary Public

My Comission Expires *April 17.1984*

SCHEDULE A

- Item 1: General Motors Corporation (Electro-Motive Division), a Delaware corporation, La Grange, Illinois 60525.
- Item 2: General Motors Corporation (Electro-Motive Division) (hereinafter in this Schedule A called "GM") warrants that its Equipment is of the kind and quality described in, and will be built in accordance with, the Specifications referred to in Article 2 of this Agreement and is suitable for the ordinary purposes for which such Equipment is used and warrants each unit of such Equipment to be free from defects in material and workmanship which may develop under normal use and service within two years from date of delivery of such unit or before such unit has been operated 250,000 miles, whichever event shall first occur. GM agrees to correct such defects, which examination shall disclose to GM's satisfaction to be defective, by repair or replacement F.O.B. factory and such correction shall constitute fulfillment of GM's obligation with respect to such defect under this warranty. GM warrants specialties not of its own specification or design to the same extent that the suppliers of such specialties warrant such items to GM. GM further agrees with the Railroad that neither the inspection as provided in Article 3 of this Agreement, nor any examination, nor the acceptance of any units of its Equipment as provided in said Article 3 shall be deemed a waiver or modification by the Railroad of any of its rights under this Item 2.

THERE ARE NO WARRANTIES WITH RESPECT TO MATERIAL AND WORKMANSHIP, EXPRESSED OR IMPLIED, MADE BY GM EXCEPT THE WARRANTIES SET OUT ABOVE.

- Item 3: GM shall defend any suit or proceeding brought against the Railroad and/or each assignee of GM's right under this Agreement so far as the same is based on a claim that the Equipment of GM's specification, or any part thereof, furnished under this

Agreement constitutes an infringement of any patent, if notified promptly in writing and given authority, information and assistance (at GM's expense) for the defense of same, and GM shall pay all damages and costs awarded therein against the Railroad and/or any such assignee.

In case any unit of such Equipment, or any part thereof, is in such suit held to constitute infringement and the use of such unit or part is enjoined, GM shall at its option and at its own expense either procure for the Railroad and any such assignee the right to continue using such unit or part, or replace the same with noninfringing equipment subject to this Agreement, or modify it so it becomes noninfringing, or remove such unit and refund the Purchase Price and the transportation and installation costs thereof. If the Purchase Price is so refunded, such refund shall be made to the assignee of GM's rights under this Agreement if this Agreement has been so assigned, which refund, to the extent of the unpaid CSA Indebtedness, shall be applied in like manner as payments in respect of Casualty Occurrences under Article 8 of this Agreement and, as long as no event of default or event which with the lapse of time and/or demand could constitute an event of default under this Agreement shall have occurred and be continuing, the balance shall be paid by such assignee to the Railroad.

GM will assume no liability for patent infringement by reason of purchase, manufacture, sale or use of devices not included in and covered by its specification. The foregoing states the entire liability of GM for patent infringement by the Equipment or any part thereof.

SCHEDULE B

<u>Type</u>	<u>Builder's Specifications</u>	<u>AAR Mechanical Designation</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Railroad Road Numbers</u>	<u>Unit Base Price</u>	<u>Total Delivered Price</u>	<u>Estimated Time and Place of Delivery</u>
GP 40-2 Road Locomotives	8091	B-B	McCook, Illinois	2	KCS 796 KCS 797	\$799,080.00	\$1,608,015.60	Bloomburg, Texas November, 1981
10 SD-50 Road Locomotives	8115	C-C	McCook, Illinois	10	KCS 704- 713	\$954,310.00	<u>\$9,616,318.96</u> \$11,224,334.56	Bloomburg, Texas November, 1981